IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8802 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRUBEN ALIAS NIRMALABEN DURGAPRASAD KAHAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8802 of 2002

MS SUBHADRA G PATEL for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/03/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged her detention order dated 3-8-2002, by which she is detained as a "bootlegger" under the Prevention of Antisocial Activities Act, (for short "the PASA"). Along with the order of detention she is also served with the grounds of detention of the same date.

In the said grounds, there is a reference about five cases pending aginst the petitioner under the Bombay Prohibition Act. It is alleged that she is keeping illicit liquor and is dealing with the same. There is also a reference about statement of two witnesses in the detention order. After considering the material on record, order of detention is passed by the detaining authority. The petitioner has challenged the aforesaid order on various grounds.

2) It is argued by the learned advocate for the petitioner that the order of detention is passed in a mechanical manner. It is submitted that the statement of witnesses were recorded by the detaining authority on 28-7-2002 and 29-7-2002. The same was verified on 2nd August, 2002 and the detention order was passed on the very next day,i.e. on 3rd August, 2002. This factual aspect is not in dispute. On behalf of the petitioner the reference is made to the decision of this Court in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) v. State of Gujarat reported in 2000 (3) GLR 2696, in the said decision this Court in para 9 has observed as under

> "9. The statement of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August, 1999, 21st August 1999 and 25th August, 1999 with regard to the incidents dated 10th July 1999, 13th June 1999 and 26th June 1999 were the material along with the proposal which is said to have been made on 27th August 1999 and it is clear from the record that it was on 29th August 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August 1999 at any time prior to 29th August 1999 and on 29th August 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e., on 30th August 1999 the detention order has been passed."

3) Considering the said aspect of the matter, it can be presumed that the order in question is passed in a mechanical manner. There is no plausible explanation even in the reply. Considering the judgement of this Court and looking to the voluminus record, it is prima facie not possible to believe that the detaining

authority can go through all the papers within a day and would pass the order. In that view of the matter, the order of detention is required to be set aside as it is passed in a mechanical manner.

4) In view of the above, this petition is allowed. The order of detention dated 3-8-2002 is quashed and set aside. The detenu, Niruben alias Nirmalaben Durgaprasad Kahar, is ordered to be set at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)
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